Minute No. 617
Report - Standing Policy Committee on Property and Development - July 5, 2005

Item No. 28 **Application Process for Establishment of Outdoor Patios within Street Right-of-Way and Rental Rate Structure**
File EP-1

COUNCIL DECISION:

Council concurred in the recommendation of the Standing Policy Committee on Property and Development and adopted the following:

1. That the rental rate structure for Leave and Licence Agreements to permit outdoor patios be approved at a rate of $1.75 per square foot.

2. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

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DECISION MAKING HISTORY:

Moved by Councillor De Smedt,
That the recommendation of the Standing Policy Committee on Property and Development be adopted by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On July 20, 2005, the Executive Policy Committee concurred in the recommendations of the Standing Policy Committee on Property and Development and the Standing Policy Committee on Downtown Development and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On July 5, 2005, the Standing Policy Committee on Property and Development concurred in the recommendations of the Standing Policy Committee on Downtown Development and the administration and submitted the matter to the Executive Policy Committee and Council.

On July 4, 2005, the Standing Policy Committee on Downtown Development recommended that the administrative recommendation be concurred in, namely, that the rental rate structure for Leave and Licence Agreements to permit outdoor patios be approved at a rate of $1.75 per square foot and forwarded to the Standing Policy Committee on Property and Development for favourable consideration.

On July 3, 2003, the Manager of Real Estate, Planning Property and Development Department, provided a verbal update to the Standing Policy Committee on Property and Development on the status of the preparation of the administrative report with respect to processing applications for establishing sidewalk cafes.

On November 25, 1999, the Standing Policy Committee on Property and Development referred the concerns raised by the St. James Village Business Improvement Zone with respect to the processing of applications for establishing sidewalk cafes to the Administration for review and report back, including therein but not limited to the following:

- incorporating the start- up filing and application fees into the Leave and License Agreements over a longer period of time
- ability to make a collective application as a BIZ, rather than on an individual basis
- explore the efficiencies that would occur with processing the applications as a group
- review of the filing and application fees.

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DECISION MAKING HISTORY (continued):

On November 25, 1999, the Standing Policy Committee on Property and Development received as information an administrative report dated November 22, 1999, outlining the process and fees associated with establishing sidewalk cafes.

On November 23, 1999, the Standing Policy Committee on Property and Development heard representation from the St. James Village BIZ with respect to the application fees associated with establishing sidewalk cafes.

Re: Application Process for the Establishment of Outdoor Patios within Street Right-of-Way and Proposed Rental Rate Structure

For submission to: **Standing Policy Committee on Downtown Development**
Standing Policy Committee on Property and Development

Original report signed by: **Director of Planning, Property and Development**

Report date: June 27, 2005

Recommendation(s):

1. That the rental rate structure for Leave and Licence Agreements to permit outdoor patios be approved at a rate of $1.75 per square foot.

2. That the proper officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

REPORT SUMMARY

Key Issues:

- The current application process requires a site by site real estate market analysis in order to determine the rental rate for an outdoor patio. By having a fixed rate per square foot, the applicant will be able to assess the feasibility of outdoor patios prior to application.

- The Department anticipates that the proposed fixed rental rate will expedite the application process for outdoor patios and in so doing benefits both applicants and administration.

Implications of the Recommendation(s):

General implications:

X	**None**
	For the organization overall and/or for other departments
	For the community and/or organizations external to the City of Winnipeg
	Involves a multi-year contract

Comment(s):

-

Policy implications:

	No
X	**Yes**

Comment(s):

-

Environmental implications:

X	**No**
	Yes

Comment(s):

-

Human resources implications:

X	**No**
	Yes

Comment(s):

-

Financial implications:

X	**Within approved current and/or capital budget**
	Current and/or capital budget adjustment required

Comment(s):

- There are no financial implications associated with the recommendations of this report, which are of a policy nature.

REASON FOR THE REPORT:

Council has the authority to establish the fee structure for Leave and Licence Agreements and this report seeks Council approval to change the fee structure.

HISTORY:

On November 23, 1999, the Standing Policy Committee on Property and Development heard a delegation from the St. James Village Business Improvement Zone with respect to application fees associated with establishing outdoor patios. The matter was laid over for further discussion to the November 25, 1999 meeting, at which time the matter was referred to the Administration for review and report back on options, including but not limited to the following:

- incorporating the start-up filing and application fees into the Leave and License Agreements over a longer period of time;
- ability to make a collective application as a BIZ, rather than on an individual basis;
- explore the efficiencies that would occur with processing the applications as a group;
- review of the filing and application fees.

DISCUSSION:

The Department has now been able to a turn its attention to this matter and is addressing the issues itemized above in this report.

On January 29, 1999, Council delegated the authority to approve outdoor patio agreements to the Director of the Planning, Property and Development Department. The attached Schedule 'A' outlines the current process involved in establishing outdoor patios.

Leave and Licence Agreements are a means to facilitate a private use, such as outdoor patios, that encroaches onto public right-of-ways. Each outdoor patio Leave and Licence Agreement is based on an annual term with a rental rate adjusted to reflect a seasonal operation of 214 days (April 1 to October 31).

Outdoor patio rentals are based upon an economic return to the estimated market value of the land in which the patio is situated. It is the Real Estate Division's practice to negotiate a 10% annual return of the market value plus an amount equivalent to realty taxes on all its land leases. Rental rates are subject to annual review by the City, but in no event will it be less than that paid in the previous year. When making an application, the rental rate is not immediately known and requires an analysis of each specific site to determine a market rent under the current formula. The applicant is unaware of the rental fee prior to submitting a non-refundable application fee.

Currently, in Leave and Licence Agreements, all administration fees and annual rental fees are required to be paid up-front to cover administration costs in the event that the outdoor patio is not proceeded with or terminated prior to the end of the licence year.

Responses to the enquiry by the St. James Business Improvement Zone, made at the November 23, 1999 Standing Policy Committee on Property and Development meeting, are as follows:

Could the start up filing fees and application fees be incorporated into the Leave and Licence Agreement over a longer period of time

It is assumed that this is intended to also include the annual rental fees. Undoubtedly, a pro-rating of the associated costs over an extended term would be a substantial benefit to applicants for outdoor patios. Their required payments could then be spread out through the year on a monthly or perhaps even bi-monthly basis.

- Collection of payments would require increased input of human resources to accommodate a change from an annual to a monthly or bi-monthly accounts receivable process.
- Collections would be further compromised due to the increased probability of dealing with non-negotiable cheques and their associated costs.
- Past history has demonstrated that for a variety of reasons, some commercial enterprises have been unable to maintain their outdoor patios and consequently have ceased operation. There would be a resulting loss of revenue as a result of clients ceasing operation during the term.

- There would be a need to monitor the ongoing use of the leave and licence area during the term.

Is it possible to make a collective application through the Biz Organization rather than on an individual basis

Although a Biz Organization could conceivably submit a collective application on behalf of their member businesses, it would be ill advised for several reasons.

- Firstly, public utilities and municipal disciplines act upon site specific proposals for outdoor patios; it could take longer to process multiple outdoor patio applications, as each site is 'site specific' and would still have to be dealt with on an individual basis.
- The Leave and Licence Agreements quite often contain conditions applicable to a specific site that are not applicable to another site due to different utility and/or departmental requirements. It would be difficult, if not impossible, to incorporate all the various conditions with respect to several different sites into a single Leave and Licence Agreement. Therefore, each potential outdoor patio site would still require its own specific agreement.

Explore the efficiencies that would occur with processing the applications as a group

It is more efficient and expeditious to process outdoor patio applications on an individual basis rather than collectively.

- Processing outdoor patio applications as a group would not necessarily be more efficient than processing them individually. Delays could result from the need to deal with a group representative rather than dealing directly with applicants.
- Discussions would be required for each specific site because of the diversity associated with each patio location and, therefore, a discussion with each site representative is required.
- Depending on the site and the associated requirements thereto, some sites could be processed relatively quickly while others would take more time. It is probable that some individual approvals would be unduly delayed due to the fact the process would have to work for the group application as a whole.

Review of the filing and application fees

Administrative fees applied to the processing of Leave and Licence Agreements for outdoor patios are presently being charged by two separate Divisions within the Planning, Property and Development Department: the Development and Inspections Division and the Real Estate Division.

- The encroachment fee portion presently charged by the Development and Inspection Division is contained within the current edition of the Planning, Development and Inspection Division By-Law No. 166/2004.

- The rental fee portion, as determined and charged by the Real Estate Division, is to generate a return of revenue for the actual use of the public right-of-way for the term.
- All administration fees and annual rental fees are required to be paid up-front to cover administration costs in the event that the outdoor patio is not proceeded with or terminated prior to the end of the licence year.

Conclusion

On an annual basis, the Real Estate Division generates approximately $30,000.00 representing the total rental fees paid by all Leave and Licence Agreements in the City. The specific fees charged to individual applicants average $330.00 for patios up to 200 square feet, $480.00 for patios up to 500 square feet and $1,542.00 for patios over 500 square feet.

In order to successfully complete an outdoor patio transaction, considerable time and human resources are required. The Administration recommends revisions to the fee structure. The benefits for establishing the rental fee structure as outlined herein are:

1. By having a fixed rate per square foot the applicant will be able to assess feasibility of an outdoor patio prior to application. The proposed fee is $1.75 per square foot.

2. A fixed rental rate expedites the application process and in so doing benefits both applicants and administration.

Financial Impact Statement **Date:** June 14, 2005

COMMENTS:

The recommendation contained in this report is that the rental rate structure for Leave and Licence Agreements to permit outdoor patios be approved at $1.75 per square foot. This recommendation relates to policy and there are no direct financial implications to the City as a result.

"Original signed by"
Mike McGinn, CA
Manager of Finance

IN PREPARING THIS REPORT, THERE WAS CONSULTATION WITH AND CONCURRENCE BY:

Planning and Land Use Division – Urban Design
Development and Inspections Division

THIS REPORT SUBMITTED BY:

Planning, Property and Development Department
Division: Real Estate
Prepared by: Maxine Clayton
PPD File #: 4225/10-C-5 (V2)
Document name: o:\reports directive\real estate\leasing\(mpc) outdoor patios report.doc

Schedule "A"

REQUIREMENTS FOR AN OUTDOOR CAFÉ ON CITY RIGHT-OF-WAY

An outdoor café means an area where food and/or drink are served to the public outside of, and immediately adjacent to, a fixed food service establishment with an existing Health Permit. When the outdoor café is proposed to be on city right-of-way, an encroachment application is required.

Application for an outdoor café on city right-of-way is made to the **City of Winnipeg Zoning and Permits Branch, Planning Property and Development Department, located at Unit 31-30 Fort Street.**

A non-refundable encroachment application fee of $157.00 (plus gst) is required. A further $250.00 fee will be assessed by the Real Estate Division to cover administrative cost. This fee will be applied to the first year rental rate of an approved patio.

Note: Applications for an outdoor cafe on privately owned property are also accepted at the Zoning and Permits Branch. Please see **Building and Occupancy Permit**.

Each application must include 9 copies of a detailed site plan that contains the following information:

- location and dimensions of the proposed encroachment area relative to the edge of the building and property line(s), location of tables and chairs within the encroachment area;
- elevation and design of the required fencing that will be used to enclose the proposed sidewalk café;
- boulevard width including width of paved sidewalk;
- location of any private approaches and street intersections in close proximity to the proposed encroachment area;
- the distance between the nearest edge along the proposed encroachment and the nearest edge of any above-ground obstruction such as, the curb line, fire hydrants, street lighting, traffic signal and other utility poles, sign posts, parking metres, trees, tree wells, vending boxes, bus shelters, etc.;
- name and telephone number of the applicant, authorization from the owner of the establishment if different than the applicant.

Upon receiving an application, the Public works department will conduct a field inspection to confirm the location of the proposed encroachment area to ensure the encroachment provides for a minimum of 2.1 metres unimpeded bi-directional pedestrian passage (3.0 metres on Main Street and Portage Avenue) and does not impede sight-visibility for motorists if located near an intersecting street or private approach.

In additional to being sent to the City of Winnipeg Public Works Department, the encroachment application is sent to the following for their comments/approval:

City of Winnipeg Water & Waste Department
Winnipeg Police Department
Winnipeg Transit
City of Winnipeg Health Services
Ward Councillor
District Planner
Manitoba Hydro / Centra Gas
MTS

The Real Estate Division of the Planning, Property and Development Department receives a copy of the circulation letter.

If any objections to the application are received, the applicant will be notified so that there can be an attempt made to resolve the issue(s). If it is necessary to deny an application, written notification will be given to the applicant, along with an explanation of the appeal process. If there are no objections, a letter will be forwarded to the Real Estate Division by the Designated Officer of Encroachments recommending approval of the outdoor café, with the following standard conditions:

STANDARD CONDITIONS FOR AN OUTDOOR CAFE

1) That the approval of this application by the Designated Officer – Encroachments is only valid for a period of 6(six) months from the date of said approval unless the applicant enters into a Leave and License Agreement with the City of Winnipeg within the stated time frame, or alternatively obtains an extension of time from the Designated Officer – Encroachments;

2) That the café remain on the sidewalk as indicated on the submitted plan only between April 1st and October 31st. of each year. However, if the café is established prior to spring clean-up the applicant shall be responsible for cleaning the café area.

3) That all utilities be permitted to enter the sidewalk patio area for maintenance, repair or installation of services at anytime without notice to the applicant;

4) That the applicant shall be responsible for any litter in the immediate area of the café and any windblown litter generated by the café.

5) That noise (including music, if any) emanating from the patio area be limited to between the hours of 7:00 a.m. and 10:00 p.m. with sound levels not to exceed 60 dBA beyond the lot line:

6) That no A-frame signs or similar type of structure be permitted outside the approved patio area;

7) That no food preparation be allowed on the patio;

8) That any doors directly accessing the patio be self closing;

9) That the means of egress at the main entrance seating area must be unobstructed at all times and maintained at a minimum clear width of 1100mm (44"), and that the guard rail stanchions are movable;

10) Any other conditions that may be imposed by interested parties.

11) That a Development Application and Occupancy Permit be obtained prior to the use of the outdoor patio.

REAL ESTATE DIVISION

Upon receipt of approval from the Designated Officer of Encroachments, the Real Estate Division prepares the following:

i) Survey sketch of proposed patio area;

ii) Proposed Terms and Conditions, resulting in a Leave and License Agreement;

iii) Determine seasonal rental.

The Real Estate Division will contact the applicant to enter into required Leave and License agreement.

DESIGN GUIDELINES

Accessibility

- Provide accessibility for persons with a disability to the highest degree practicable
- Patios enclosed by fencing can present a tripping hazard for persons with low vision. Patio fencing should be detectable for persons who may be using a cane to navigate. Fences should be a contrasting color to the sidewalk surface and should provide a solid detectable edge just above the sidewalk surface.

Location

- The café location should not interfere with comfortable pedestrian movement. A clear walkway width of 6' is preferred. If this is not possible a 5' clear walkway width is required.

Fencing

- Fencing should be firmly fixed but portable to allow for removal in the winter months (snow clearing and street work).
- Installation of fencing should not damage the pavement on public sidewalks.
- Fencing should be color contrasted to surrounding pavement surfaces.
- Fencing should provide a solid detectable edge just above the sidewalk surface.
- A height of 36" is preferred to allow visual monitoring.
- As the height of the fence increases so should level of transparency.
- Fencing material should be durable and consistent with the character of the street.

Signage

- Signage should be limited to business name and logo only
- Signage should not occupy more than 25% of the enclosure area
- Separate permit is required prior to installing any signage.

Maintenance

- Patio furnishings and fencing should be well maintained.